

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA,  
NORTHERN DIVISION

JAMES A. SMITH et al.,

Plaintiffs,

VS.

KANSAS CITY LIFE INSURANCE CO., et al.,

Defendants.

CASE NO. 2:05CV1198-MHT

## MOTION TO REMAND

Plaintiffs James and Jeanette Smith move the Court pursuant to 28 U.S.C. § 1447, to remand this action to the Circuit Court of Montgomery County, Alabama for the following reasons:

1. This Court lacks subject matter jurisdiction over this action.
2. This civil action is not one “of which the district court of the United States have original jurisdiction.” 28 U.S.C. § 1441(a).
3. There is no “federal question” to afford this Court jurisdiction pursuant to 28 U.S.C. § 1331 because:
  - a. This case does not arise under the Constitution, laws or treaties of the United States.
  - b. The only claims asserted by Plaintiff arise under Alabama law.
4. There is no diversity of citizenship to afford this Court jurisdiction pursuant to 28 U.S.C. § 1332 because:
  - a. Defendant Anne F. Watkins is a resident of the State of Alabama.

b. Removal based on diversity is available only if none of the defendants is a citizen of the state in which this action is brought. Gogg v. Michelin Tire Corp., 837 F. Supp. 1143 (M.D. Ala. 1993).

5. Defendants have failed to meet their substantial burden of showing that no possibility exists the Alabama Court could find that this Complaint states a cause of action against the resident Defendant. Coker v. Amoco Oil Co., 709 F. 2d 1433 (11<sup>th</sup> Cir. 1983).

6. Plaintiffs' Complaint states at least one cause of action upon which relief could be granted under state law against the resident defendant. *Lambert v. Mail Handlers Benefit Plan*, 682 So.2d 61, (Ala. 1996); *Albert v. Sui-Yean Hsu*, 602 So. 2d 895, (Ala. 1992); *Alfa Mut. Ins. Co. v. Roush*, 723 So. 2d 1250 (Ala. 1998); *Lewis v. Roberts*, 630 So. 2d 355, 357 (Ala. 1993).

/s/ Nathan A. Dickson, II

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all counsel of record as listed below by placing same in the United States Mail, properly addressed and first class postage prepaid, on this the 12th day of January, 2006.

/s/ Nathan A. Dickson, II  
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